

agreement. If unsuccessful, the contracting officer shall issue a stop-work order in accordance with contract clause FAR 52.233-3, Protest After Award.

(2) If suspension of contract performance is not required by FAR 33.103(f)(3) and if the contracting officer determines that the award was proper, the contracting officer shall furnish the protester a written explanation of the basis for the award which is responsive to the allegations of the protest. The contracting officer shall advise the protester that the protester may appeal the determination to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, or the Comptroller General, as specified in internal Department guidance.

(3) If suspension of contract performance is not required by FAR 33.103(f)(3) but the contracting officer determines that the award is questionable, the contracting officer may consult with the Office of the General Counsel (025) and shall advise the contractor of the protest and invite the contractor to submit comments and relevant information. The contracting officer shall submit the case promptly to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Administration Team, or the Chief Facilities Management Officer, Office of Facilities Management, in the case of a contract awarded by the Office of Facilities Management, who may consult with the Office of the General Counsel (025) and who shall either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General for a decision. The contracting officer shall provide interested parties with a copy of the final decision.

(f) *Agency appellate review of contracting officer's protest decision.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal with the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued

by the Office of Facilities Management, with the Chief Facilities Management Officer, Office of Facilities Management. To be considered timely, the appeal must be received by the Deputy Assistant Secretary for Acquisition and Materiel Management or, for solicitations issued by the Office of Facilities Management, by the Chief Facilities Management Officer, Office of Facilities Management, within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal. Appeals shall be addressed as provided in paragraphs (a)(2)(i) or (iii) of this section. Appeals shall not extend GAO's timeliness requirements for appeals to GAO. By filing an appeal as provided herein, an interested party may waive its rights to further appeal to the Comptroller General at a later date. Agency responses to appeals submitted to the agency shall be reviewed and concurred in by the Office of the General Counsel (025).

[51 FR 23070, June 25, 1986, as amended at 52 FR 28560, July 31, 1987; 52 FR 49017, Dec. 29, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996; 61 FR 20492, May 7, 1996; 63 FR 15318, 15319, Mar. 31, 1998]

833.104 Protests to GAO.

(a) *General.* (1) When a protest before or after award has been lodged with the General Accounting Office (GAO), the contracting officer will prepare a report to be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Resources Service, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, within 5 workdays after receipt of verbal notice of the protest or receipt of a copy of the protest, whichever occurs first, for preparation of the Department report. The report should include a copy of the documentation indicated in FAR 33.104(a)(3)(ii).

(2) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(2).

(b) *Protests before award.* When the Department has received notice from the GAO of a preaward protest filed directly with GAO, award shall not be

made until the matter is resolved, unless the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Resources Service, or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate, approves the head of contracting activity findings required by FAR 33.104(b)(1) and GAO has been notified pursuant to FAR 33.104(b)(2).

(c) *Protests after award.* Protests after award shall be handled in a manner consistent with procedures identified for protests before award. Although persons involved or affected by the filing of a protest may be limited, at least the contractor shall be furnished the notice of the protest and its basis by the contracting officer. When VA receives from GAO, *within ten calendar days after award*, a notice of protest filed directly with GAO, and it is determined by the head of the contracting activity pursuant to FAR 33.104(c)(2) that contract performance should be authorized, the written findings will first be approved by the Deputy Assistant Secretary for Acquisition and Materiel Management, Acquisition Resources Service (or the Chief Facilities Management Officer, Office of Facilities Management, as appropriate), and the GAO must be notified as required by FAR 33.104(c)(3).

[51 FR 23070, June 25, 1986, as amended at 52 FR 28560, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 58 FR 48974, Sept. 21, 1993; 61 FR 11586, Mar. 21, 1996; 64 FR 69221, Dec. 16, 1998]

833.106 Solicitation provision.

(a) The contracting officer shall insert the provision at 852.233-70, Protest Content, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 852.233-71, Alternate Protest Procedure, in each solicitation where the total value of all contract awards under the solicitation is expected to exceed the simplified acquisition threshold.

[63 FR 15319, Mar. 31, 1998]

Subpart 833.2—Disputes and Appeals

833.209 Suspected fraudulent claims.

Matters relating to suspected fraudulent claims will be referred to the Assistant Inspector General, Office of Investigations (51) for investigation and referral to the Department of Justice. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General.

[51 FR 23070, June 25, 1986]

833.211 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer shall furnish the contractor his/her final decision in the matter.

(b) The decision must be identified as a final decision, be in writing, and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. It will normally be in the form of a statement of the claim or other description of the dispute with necessary references to the pertinent contract provisions. It will set forth those facts relevant to the dispute, with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) Except as provided in paragraph (d) of this section, the decision shall, in addition to the material required by FAR 33.211(a)(4), contain the following:

The Department of Veterans Affairs Board of Contract Appeals (VABCA) is the authorized representative of the Secretary for hearing and determining such disputes. The rules of the VABCA are published in section 1.783, of Title 38, Code of Federal Regulations. The address of the Board is 810 Vermont Avenue, NW., Washington, DC 20420.

[51 FR 23070, June 25, 1986, as amended at 52 FR 28561, July 31, 1987; 54 FR 40065, Sept. 29, 1989; 61 FR 20492, May 7, 1996]